2000

The State of Utah v. Geraldine M. Davis : Brief of Appellant

Utah Supreme Court

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IN THE

SUPREME COURT

OF THE

STATE OF UTAH

STATE OF UTAH, in the interest of

RICKY WINGER

GERALDINE M. DAVIS,

Petitioner-Appellant.

Case No. 14368

APPELLANT'S BRIEF

Appeal from Judgment of Second District Juvenile Court
for Salt Lake County
Honorable John Farr Larson

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BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The appellant, Geraldine M. Davis, appeals from an Order ordering that all permanent rights of the mother, Geraldine M. Davis (Winger) including residual rights, be permanently and completely terminated pursuant to Utah Code Annotated § 55-10-109, as amended 1953. The case was tried before the Honorable John Farr Larson, presiding in the Second District Juvenile Court, Salt Lake County.

DISPOSITION IN THE LOWER COURT

On November 5, 1975, the Second D trict Juvenile Court ordered that all permanent rights of the mother,

Geraldine M. Davis (Winger), including residual rights, be permanently and completely terminated. The lower Court further ordered that the State Division of Family Services is authorized and directed to make permanent plans, including adoption if possible, for the child, Ricky Winger. Thereafter, appellant filed notice of Appeal on December 5, 1975.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the judgment and judgment in her favor as a matter of law.

STATEMENT OF THE FACTS

The minor child, Ricky Winger, was born December 31, 1973. Following his birth and release from the hospital, he remained with his parents until March 8, 1974, when the police removed him for his protection while his parents were involved in a serious argument.

The child is microcephalic, hypotonic (lack of muscle tone), motor delayed and mentally retarded.

Geraldine M. Davis is the twenty four year old mother of the child, Ricky Winger. Appellant has full scale I.Q. of 52, with a verbal I.Q. of 61 and performance I.Q. of 46, placing her in the mental defective range at a level of trainable, mentally retarded.

The proceedings in the Second District Juvenile

Court were brought pursuant to petitions of both parents of the child, for return of custody and guardianship and on the petition of the State seeking permanent termination of parental rights and in support thereof, alleging pursuant to Utah Code Annotated § 55-10-109 (1)(a), as amended 1953, that "the parents are unfit or incompetent by reason of conduct or condition seriously detrimental to the child."

Although during the proceedings in the Second District Juvenile Court there was no proof that Ricky Winger had ever been abused or neglected, the lower Court ruled in favor of the State and against both parents and found that appellant was mentally and emotionally unable to provide the child with proper care and stability and ordered that all parental rights of appellant in the child Ricky Winger be permanently and completely terminated.

ARGUMENT

POINT I

THE SECOND DISTRICT JUVENILE COURT ERRED IN DEPRIVING THE MOTHER OF THE MINOR CHILD, RICKY WINGER OF ALL PARENTAL RIGHTS IN THAT SAID DECISION WAS BASED ONLY UPON FEAR THAT THE MOTHER MIGHT IN THE FUTURE HARM THE MINOR CHILD OR OTHERWISE BE UNABLE TO PROPERLY CARE FOR THE CHILD, NOT THAT SHE HAD EVER HARMED THE CHILD IN THE PAST OR BEEN NECESSARILY UNABLE TO PROPERLY CARE FOR THE CHILD IN THE PAST.

Appellant was permanently deprived of the custody

of her minor child, Ricky Winger, pursuant to § 55-10-109 (1)(a), by finding that appellant, the natural parent, was "unfit or incompetent by reason of conduct or condition seriously detrimental to the child." However, in implementing this statute the Juvenile Court is required to follow the general guidelines of the Juvenile Court Act of 1965 wherein, in section 63, is stated the purpose of the act:

> "It is the stated purpose of this act to secure for each child coming before the Juvenile Court such care, guidance, and control, preferably in his own home, as will serve his welfare and the best interest of the State; to preserve and strengthen family ties whenever possible...."

The phraseology of, "preferably in his own home," "and to preserve and strengthen family ties" indicates that there exists in this State a fundamental preference for keeping the family unit together. The case law also strongly supports this notion. In the Utah case of In re State in the Interest of L.J.J., 11 Utah 2d 393, 360 P.2d 486, at 488, the Court stated;

> "Furthermore, this Court has repeatedly recognized that there is a presumption that it will be for the best interest of the child to be raised under the custody, control and supervision of his natural parents...the ultimate burden of proof on this question is always in favor of the natural parents and against any other person seeking custody of such child, in addition thereto, this presumption is based on logic, and experience shows generally that

> parents have more love, devotion and regard for their own children than do other people."

The Court in another opinion, State in the Interest of F-,D- and P- v. Dade, 14 Utah 2d 47, 376 P.2d 948, at 949, states:

> "We are entirely in agreement with the presumption in which appellant seeks refuge, that it is generally for the best interest and welfare of the child to be reared under the care of their natural parents; are appreciative of the mutual advantages to be found in the love, affection, and interest which parent and children normally show each other; and of the seeming harshness of allowing the law to step in and deprive them of these values. That the cutting of family ties is a step of the utmost gravity which should be done only for the most compelling reasons is not to be questiond. This is even more true because to do so results in relieving the natural parents of the duty to support and care for their offspring and places the burden upon the State. Everyone will concede that this is undesireable, both socially and economically, and therefore to be avoided unless that is the only alternative to be found consistent with the best interest of the children."

The Court goes further at page 950 in the same case and states concerning the deprivation of the parents' custody of children, "we agree that this is a drastic remedy which should be resorted to only in extreme cases and when it is manifest that the home cannot and will not support such an "extreme case" in the situation of the appellant as will be shown below.

It is clear that the legislature intended by enacting the foregoing stipulation

that this Court has always so construed the Juvenile Court Act to hold that the purpose of the legislation should be accomplished by working with the parents and children within the home and to preserve the family's status whenever possible, and that children should not be removed from the home or from custody of their parents before it becomes apparent that conditions exist in the home which are "seriously detrimental" to the welfare of the child.

"One of the basic tenets of our system of law and justice is that it attempts to accord to all individuals protection in their persons and property, and this is true, a fortiori, of children." State in Interest of K-B-, 326 Utah 2d 398, 326 P.2d 395. The Juvenile Court is the agency of our government which is given the primary responsibility for the protection of children and it is given broad powers of discretion in determining the custody of a child. However, this Court has repeatedly cautioned the Juvenile Courts to exercise sound judgment in use of the discretion in them vested and has set certain limits on such discretion. In State in the Interest of K-B-, supra, at 397, the Court stated:

> "It seems plain that the intended purpose to be divined from the statutes above quoted is that the Juvenile Court has authority to permanently deprive

> parents of the custody of the children when circumstances make such action necessary for their protection and welfare. In so concluding we are aware that such power is indeed awesome in the effect it may have upon the lives of the persons involved. It should be administered with sound discretion and with due regard for the presumption that the natural parent is the proper custodian of his child, in that it is the policy of the Courts to be reluctant to deprive parents of their children."

Although it is clear that an extremely strong presumption exists in favor of the natural parents, this Court has held that it will not distrub the findings and determination of the Juvenile Court unless it is found that they are clearly against the weight of the evidence or that it is plainly manifest that the Juvenile Court abused its discretion. State in interest of F-,D-and P- v. Dade, 14 Utah 2d 47, 376 P.2d 947 at 951.

In the instant case it is apparent that such discretion was abused by the Juvenile Court. The record indicates that the Court found that appellant by reason of being mentally and emotionally retarded would be unable to properly care for her child. This decision was based largely upon the testimony of Dr. Liebroder, the psycologist who examined the mother. The Court also heard testimony from three other witnesses: a supervisor of foster care in the Division of Family Services, a case worker with Division of Family Services, and another

case worker with the Division of Family Services, who all testified that it was their opinion that appellant was not able to properly care for the child, Ricky Winger. The Juvenile Court Judge also noted as part of the basis for his finding of the present condition of the mother the fact that he had observed her at often times engaging in inappropriate conduct in the Courtroom. However, the Juvenile Court's observation of the mother's temperment during the trial should certainly not be regarded as being evidence of the mother's normal behavior. In fact, this was the subject of a discussion by the Federal District Court of the District of Columbia where a mother had repeatedly and in contempt of Court interrupted the Judge holding the hearing. The Court dismissed the mother's conduct, stating that such interruptions of Court "might have been no more than the natural acts of a distraught mother." Re Stuart (1940), 72 App DC 389, 114 F.2d 825.

The reason for the Juvenile Court's abuse of discretion lies in the fact that there was also substantial evidence adduced at the Juvenile Court hearings that appellant would be able with help to properly care for her child and that in fact she had cared for him adequately in the past without help. Marshall Perkins,

M.S.W. and PhD., a psyschologist, testified that he saw appellant as immature with some emotional instability, but that he did not see this as being dangerous to the child, and disagreed with the State's position to permanently terminate the mother's parental rights.

Mrs. Evelyn Holts, a Nutrition Aid from the Extension Service, testified that the mother became easily excited, but that the mother did a fairly adequate job of bathing, dressing and getting the child to sleep after his bath. It was her opinion also that the mother would need supervisory help to care for the child, but with the mother's temper she was fearful of the child's safety. However, there was no proof that in the time the child was cared for by his mother that the mother had ever lost her temper with the child or that she had ever harmed or abused the child.

Mr. Kenneth Salzman, M.S.W., saw the mother as self-centered and retarded but able to function with help. He did not see her as harmful to the child.

Mr. and Mrs. Waldo J. Harris, testified that they had had ample opportunity to observe appellant with her baby. They both testified that they had never noticed any harm to the baby and indicated that the mother was very tender-hearted and testified that they thought the

mother could be a good mother.

Also in appellant's favor was the fact that, during the course of the Juvenile Court hearings she married one John Davis. The Court noted that Mr. Davis had some stability, having held a job for a number of years. Mr. Davis also testified that he thought that appellant would make a good wife and mother.

There was no evidence introduced at any time during the hearings to substantiate any claim that appellant had ever in the past harmed, abused or neglected the child. Yet in spite of this the Juvenile Court still terminated appellant's parental rights in her child.

It is apparent from the foregoing discussion that a very strong presumption exists both by statute and by case law in Utah that the parent is the best guardian of his or her child. It is also apparent that the Juvenile Court possesses a wide latitude of discretion in determining child custody matters but that this discretion must be closley guarded to prevent abuse. It is clear that in this case such discretion was abused by the Juvenile Court in that the evidence adduced at the Court clearly did not preponderate to the extent necessary to overcome this presumption on two different, distinct grounds.

First, in addition to the testimony of the State's witnesses there was substantial testimony that appellant would be properly able to care for her child with help. Certainly, appellant is entitled to an opportunity and a chance to have some assistance provided for her to care for her own child in her home, "since the right of a parent, under natural law, to establish a home and bring up children is a fundamental one and beyond the reach of any Court." Meyer v. State of Nebraska, 262 U.S. 390, 399, 43 S.Ct. 625, 67 L.Ed. 1042. Affording her such an opportunity is certainly harmonious with the purpose of the Juvenile Court Act and the Utah cases previously cited. Appellant is entitled to the opportunity to raise her child, even with help if necessary, and the Juvenile Court under these circumstances should not be allowed to deprive her of this fundamental right.

Second, the Juvenile Court abused its discretion in terminating appellant's parental rights without any evidence of past abuse or neglect by the mother. In fact, appellant evidenced just the opposite during the four months that the child was still in her custody. The evidence showed that appellant did an adequate job of caring for her child. The State's witnesses to a

large extent based their opinion that the child would be unsafe in the mother's hands on the fact that the mother, in their opinion, became easily frustrated. However, any parent of small children can easily testify that the times when a parent is liable to become the most greatly frustrated with a child is probably when the child is less than two years old. Ricky Winger is now almost 2 1/2 years old, well past this frustrating age.

"No Juvenile Court can, for any but the gravest reasons, transfer a child from its natural parent to any other person." People ex rel Portnoy v. Strasser, 104 N.E. 2d 895 at 896, 303 N.Y. 539 at 538, Meyer v. Nebraska, supra. It is clear that in this case such "grave reasons" do not exist. Appellant is now married to a man of stability, she is able to provide a proper home for the child and evidence introduced at the hearings showed that she could, with help if needed, properly and adequately care for her child. Several cases concerning the removal of children from the custody of their parents have been reviewed by this Court. In every case examined where the Juvenile Court's termination of parental rights had been affirmed it was found that the parent who was to be deprived of custody had in the past abused or neglected the child. No case had been found wherein a parent

was deprived of custody without there having been proof of some past abuse or neglect of the child. In fact this Court has gone even further and returned custody of minor children to the natural parent where the Juvenile Court had found that the parents had in the past neglected the child, such as where a parent had failed to provide dental care for two minor children even after being advised of the need for such care. State in Interest of Inez Pilling v. Lance, 23 Utah 2d 407 (1970), 464 P.2d 395.

The State in the Juvenile Court proceedings failed to overcome the presumption in the favor of the natural parent. In so doing the Juvenile Court abused its discretion in finding that appellant was "unfit or incompetent by reason of conduct or condition seriously detrimental to the child." Therefore the judgment of the Second District Juvenile Court should be reversed and custody of the child, Ricky Winger, returned to appellant.

POINT II

UTAH CODE ANNOTATED § 55-10-109, as amended 1953, IS UNCONSTITUTIONAL AS BEING VOID FOR VAGUENESS AND THAT IT IS UNCONSTITUTIONAL IN THE MANNER IN WHICH IT WAS IMPLEMENTED AGAINST APPELLANT.

The statute in question violates appellant's right to due process by establishing a standard which is impos-

sible for appellant to ascertain in advance and makes a finding of a Court adverse to the appellant a drastic and traumatic occurrence. Indeed it could be said that there exists no civil penalty more drastic and traumatic.

Due to the seriousness of the penalty involved, and due to the nature of the proceedings wherein the State versus an individual in a criminal type proceeding, this type of statute should be subject to the same degree of clarity to which criminal statutes are subject. In United States v. Cardiff, 344 U.S. 174, the United States Supreme Court made it clear that criminal statutes must be definite as to the persons within the scope of the statutes and the acts which are penalized. In Musser v. Utah, 333 U.S. 95 (1948), the Supreme Court considered a charge of conspiracy to violate public morals under sub-section (5) Utah Code Annotated § 103-11-1, as amended 1943, and said:

> "Legislation may run afoul of the Due Process Clause because it fails to give adequate guidance to those who would be law-abiding, to advise defendants of the nature of the offense with which they are charged, or to guide courts in trying those who are accused."

Upon appeal to the Supreme Court of Utah, that section, was delcared unconstitutional. State v. Musser, 223 P.2d 193 (Utah).

The section in question is just as ambigious as the statute struck down in the Musser case. It states simply that "the Court may decree a termination of all parental rights with respect to one or both parents if the Court finds: (a) "If the parent or parents are unfit or incompetent by reason of conduct or condition seriously detrimental to the child." §§ 55-10-109 (1)(a). Such a standard is totally vague and ambiguous. Nothing is stated concerning what standards are to be used to determine whether or not a parent is "incompetent by reason of conduct or condition seriously detrimental to the child." An argument could be made that a more definate and strictly defined standard is impossible given the nature of such cases. This argument, however, serves only to point out the fact that the Juvenile Court itself really has no idea under what circumstances it will find that a parent is incompetent to care for his child. The result is that the parent has no idea what conduct constitutes a violation of the statute in question. In Lanzetta v. New Jersey, 306 U.S. 451, the Supreme Court held that a statute must be sufficiently explicit to inform those subject to it as to what conduct will render them liable to its penalties, and a statute forbidding the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning

and differ as to its application is violative of due process.

This problem is extremely aggravated by the instant case where the Juvenile Court found a "condition seriously detrimental to the child." Appellant's custody was terminated solely because she had the misfortune to be born mentally retarded and not on any past conduct on her part.

§ 55-10-109 further denies appellant herein equal protection under the law in that it establishes an arbitrary class of conduct and the inclusion of appellant denies appellant of the "basic and fundamental right of a parent under natural law, to establish a home and bring up children." Meyer v. State of Nebraska, supra. It would appear that the Juvenile Court has construed the statute so as to create a class of people who are to be considered incompetent to exercise the valuable and fundamental right of parenthood and therefore denies them the same. The class included by this statute then is the class of mentally retarded people.

Our Courts have sustained certain classifications when reasonable. However, the Supreme Court has made justification much more stringent where the inclusion within the class denies a basic right. The Supreme Court and this Court have held that the right to

parenthood is an extremely fundamental right and that all the presumptions lie in favor of the competency of a natural parent to be the guardian of his children and that the State will terminate this right only for the gravest compelling reasons. Meyer v. State of Nebraska, supra, People ex rel Portnoy v. Strasser, supra, State in Interest of K-B-, supra.

It is submitted that the classification used by the Juvenile Court for termination of appellant's parental rights was clearly arbitrary. It can be argued that the ruling of the Juvenile Court was not arbitrary in that extensive hearings were conducted on the matter in the Juvenile Court before it ordered appellant's parental rights terminated. However, this further accents appellant's point that the ruling was arbitrary. Even after such extensive hearings, there was still no evidence that appellant had ever neglected or abused the child. The evidence was in fact that in the past she had done a fairly adequate job of caring for her child. Such an arbitrary ruling clearly violates appellant's rights to equal protection under the law as well as constituting an abuse of the discretion vested in the Juvenile Court.

Appellant is certainly aware that the statute involved is intended to protect children from the potential of abuse or neglect of a parent. Such protection

however, can and must be provided without the deprivation of the parent's constitutional rights and these rights have been violated where there was evidence that appellant had done an adequate job of caring for her child in the past without evidence of any abuse or neglect.

§ 55-10-109 (1)(a) then is unconstitutional as applied to appellant because it denies a parent his constitutional rights to equal protection and due process of law by establishing a standard which is vague and ambiguous and impossible for any person to ascertain in advance. This is especially true in the instant case where the condition found to be seriously detrimental to the child was the mother's mental retardation with no finding that appellant had ever abused or neglected her child in the past and that in fact there was evidence to show that in the past appellant had been a good mother and had done an adequate job in providing and caring for her child.

CONCLUSION

The appellant respectfully submits that the Juvenile Court abused the discretion vested in it when it terminated all parental rights of appellant in the minor child, Ricky Winger. This decision was clearly against the weight of the evidence in that, first, there was evidence that the mother could in the future

properly care for her child if given help and that she had done an adequate job in the past without help. Second, there was no proof that appellant had ever neglected or abused her child in the past.

Appellant further submits that §§ 55-10-109 (1)(a) is unconstitutional on its face and as applied to appellant. First, the statute is vague and ambiguous on its face and sets no guidelines for any reasonably prudent person to determine what constitutes a violation of the standards that this statute is designed to enforce. Second, the statute is unconstitutional as applied to appellant in that it has been used to create an arbitrary classification (mental retardation), and the inclusion of appellant therein has deprived her of one of the most basic and fundamental rights afforded to every person: the right to parenthood.

The removal of a child from its natural mother is a most drastic and traumatic action. No greater property right or right in life is involved in any other judicial action. When such a drastic step becomes necessary it should be based upon good sound evidence of record duly considered in appropriate judicial circumstances. The record as is now before this Court indicates that the evidence considered by the Juvenile

Court was not sufficient to overcome the presumptions of law afforded the natural parents of minor children and that the Juvenile Court abused the discretion in it vested by terminating all parental rights of appellant. Concern for proper judicial administration and due concern for the fundamental rights of appellant to raise her natural child requires that this Court reverse the decision of the Juvenile Court and return custody of the child Ricky Winger to his mother.

Respectfully submitted,

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Appellant